



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0016]

RIN 1625-AA87

Security Zone; Presidential Security Zone, Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone that encompasses certain waters of the Lake Worth Lagoon, Intracoastal Waterway, and Atlantic Ocean near the Mar-A-Lago Club and the Southern Boulevard Bridge in Palm Beach, Florida (FL). The Coast Guard will only enforce this rule when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service are present or expected to be present. This action is necessary to protect the official party, public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble go to:

<http://www.regulations.gov> and enter USCG-2017-0016 in the “SEARCH” feature. Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION, CONTACT: If you have questions on this rule, call or email, Petty Officer Mara Brown, Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
FL	Florida
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Through this final rule, the United States Coast Guard is establishing a security zone that encompasses certain waters of the Lake Worth Lagoon, the Intracoastal Waterway, and the Atlantic Ocean in the vicinity of the Mar-a-Lago Club and the Southern Boulevard Bridge in Palm Beach, FL. The security zone is necessary to protect the official party, the public, and the surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. The Coast Guard will only enforce the security zone when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service are present or expected to be present. On June 20, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, “Security Zone; Presidential Security Zone, Palm Beach, FL” in the Federal Register (82 FR 28036). In the NPRM, we invited members of the public to provide comments on our proposed regulatory action related to this security zone. During the comment period, which ended on July 20, 2017, the Coast Guard received sixteen submissions containing twenty-two separate comments.

III. Legal Authority and Need for the Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The COTP Miami has determined the security zone is necessary to protect the official party, public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. The purpose of this rule is to ensure the security of vessels and navigable waters during visits to the Mar-a-Lago Club by the President, the First Family, and other persons under the protection of the Secret Service.

IV. Discussion of Comments and Changes to the Rule

A. Discussion of Comments

The Coast Guard received sixteen submissions from the public consisting of twenty-two separate comments in response to the proposed rule. The total number of comments exceeds the number of submissions because many commenters expressed their views about more than one aspect of the proposed rule. All the comments we received were from private citizens and are discussed below.

Six commenters endorsed the Coast Guard's proposal, but some of these commenters had questions or concerns that we will discuss individually below.

Three commenters expressed opposition to the proposed rule. One of these commenters expressed opposition to any waterway restrictions. We note this opposition. The two other commenters expressed concern that the restrictions on boaters would be permanently enforced year round. As noted in the NPRM, the security zone will not be in effect at all times. The Coast Guard will only enforce the security zone when the President, First Family, or persons receiving Secret Service protection are present or expected to be present at the Mar-a-Lago Club.

Three commenters had regulatory-related questions. Two questions were of a similar nature, involving public notification. One of these commenters suggested the Coast Guard notify each affected property owner prior to activating the security zone. The other commenter asked if signs advising the public of the security zone would be placed on a nearby bridge and surrounding area. The Coast Guard considered these comments and will amend the final rule's regulatory text in section 165.785(d) to advise the public that it will rely on our notification methods described in 33 CFR 165.7 to notify the local community prior to activating the security zone.¹ The Coast Guard will send a Maritime Safety Information Bulletin (MSIB) that contains a map of the security zone and description of the regulation to a local marine industry group who will circulate the MSIB among local marinas and local boating clubs. In addition, on-scene Coast Guard units will distribute MSIBs to approaching boaters. The Coast Guard will also issue a press release to local news outlets, and post the information on social media and on its news website at: www.news.uscg.mil. On-scene Coast Guard patrol assets will also display flashing energized blue lights when the center, west, or east security zones are in effect. Finally, the Coast Guard will issue a Broadcast Notice to Mariners (BNM) over VHF marine radio on channel 16. The third commenter asked if first-time violators of the security zone could receive a reduced fine. Any violation of the security zone may result in fines and/or penalties as set forth in 33 U.S.C. 1232 and 50 U.S.C. 192; however, law enforcement units enforcing the security zone will determine whether a citation or warning is warranted on a case-by-case basis.

Four submissions were related to the restrictions being placed on boater activities, including non-motorized boats such as kayaks, canoes, and paddleboards. These comments ranged from concerns the security zone would affect the pleasure of boating to concerns that

¹ 33 CFR 165.7(a) permits the Coast Guard to notify persons of the establishment of limited access areas and regulated navigation areas by "marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, and on-scene oral notice, as well as publication in the Federal Register."

residents would not be allowed to use their boats at all. They also expressed concerns that they would not be able to return to their waterfront homes when the security zone was activated. The east or west security zones do not prohibit boaters from travelling through these zones; they merely regulate how boaters may transit through these areas. The west zone requires persons and vessels seeking to travel through this zone to be escorted by an on-scene designated representative, maintain a steady speed, and not slow down or stop except in the case of unforeseen mechanical failure or other emergency. The east zone does not require an escort, but requires persons and vessels seeking to travel through this zone to travel at a steady speed, and not slow down or stop except in the case of unforeseen mechanical failure or other emergency. The center zone is the only zone that prohibits any vessel or person from entering, transiting, anchoring in, or remaining within the zone without obtaining permission from the COTP Miami or a designated representative, while the security zone is in effect. Boaters wishing to return home through the center zone when this zone is in effect will have to notify on-scene law enforcement units who will then escort them back to their dock.

In addition, the commenters advocated for allowing non-motorized boats to come within 50 feet of the Mar-a-Lago Club, which is adjacent to the center zone. As stated above, boats are prohibited from entering, transiting, anchoring in, or remaining in the center zone without obtaining permission from the COTP Miami or a designated representative. Allowing pleasure boats to enter this zone for recreational purposes while the security zone is in effect would reduce the effectiveness of this zone as a protective measure.

One commenter expressed concerns that the rule would affect businesses in the area, which heavily rely on tourist dollars, especially during the peak autumn months. The commenter added one of the primary attractions to Florida is the boating and fishing industries and the

creation of the security zone would discourage tourists from visiting the area, and as a result, local businesses would lose revenue. We believe businesses that rely on tourism will not be affected by this rule because these businesses will be allowed to continue to conduct their business practices as they normally would even when the security zone is in effect.

Another commenter sought clarification on why the proposed rule would not adversely affect the economy, and why making this a permanent rule that would be enforced using government resources is required or provides a cost benefit to the public in lieu of the “temporary security zones” referenced in the NPRM at Section II, “Background, Purpose, and Legal Basis.” The rule will not have an adverse effect on the economy because this rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For further information on the economic analysis of this rule, see sections V.A. and V.B. of this final rule below. The security zone established by this rule would not be in effect all the time, but only during visits by the President, the First Family, and other persons under the protection of the Secret Service to the Mar-a-Lago Club. The Coast Guard conducted a cost-benefit analysis of this regulatory action, and determined creating a permanent security zone was the best approach to achieve our regulatory objectives because of the recurring need for the zone for an extended period of time. Establishing a permanent security zone allows the public and potentially affected persons to establish certainty about expected protection measures during such visits.

One comment addressed concerns with the public’s ability to protest from their boats. The Coast Guard respects the First Amendment rights of protesters. Any persons wishing to protest in a location affected by this rule should contact the person listed in the **FOR FURTHER**

INFORMATION CONTACT section so they may coordinate protest activities in a manner that would not jeopardize the safety or security of people, places, or vessels.

Another commenter stated the way in which armed on-scene Coast Guard personnel speed toward boaters is unnecessary and intimidating. The commenter added that approaching boaters in this manner tends to make the boater stop, but the proposed rule states that boaters should not stop or they will be considered a threat. The purpose of the security zone is to protect the official party, the public, and the surrounding waterway from terroristic acts, sabotage or other subversive acts, accidents, or other events of a similar nature. As such, the Coast Guard must adhere to certain protocols in the course of enforcing the security zone. On-scene Coast Guard units are following established protocols that include having armed personnel who will approach and investigate all vessels seeking escort through the security zone to ensure the safety of all persons involved.

One commenter requested the Coast Guard establish a safety zone, in addition to a security zone, in the waters around the Mar-a-Lago Club, and suggested this could easily be done by placing floating buoys in the safety zone area advising boaters that the area is inaccessible. The commenter is concerned that dredging would occur around the Mar-a-Lago Club, which would allow boaters to anchor their vessels unattended within the area covered by the security zone, and then when the security zone goes into effect there would be no place to put these vessels. The waters around the Mar-a-Lago Club are not deep enough for boaters to anchor their vessels nor has there been an issue with boaters attempting to anchor their vessels in the waters around the Mar-a-Lago Club. The Coast Guard has determined a security zone is sufficient to mitigate any potential security threats presented while protected persons are in the residence at the Mar-a-Lago Club.

We received one comment suggesting that the Coast Guard's protection of the waters near the Mar-A-Lago Club should be tied to the Coast Guard's budget. This comment is beyond the scope of this rulemaking.

B. Discussion of Changes

This rule contains changes in the regulatory text from the NPRM. We found the coordinates defining the east security zone (section 165.785(a)(3)) to be incorrect. The incorrect coordinates extended the east security zone further offshore than intended. The regulatory text in this rule contains the corrected coordinates. The revised coordinates for the east zone are: All waters of the Atlantic Ocean within the following points: Beginning at Point 1 in position 26°41'21"N, 80°02'01"W; thence south following the shoreline to Point 2 in position 26°39'57"N, 80°2'09"W; thence east to Point 3 in position 26°39'57"N, 80°01'36"W; thence north to Point 4 in position 26°41'22"N, 80°01'29"W, thence back to the origin at Point 1.

In 33 CFR 165.785(a)(1)-(a)(3), the words "surface to bottom" are added to clarify the extent of the intended coverage of the security zone.

In response to public comments we have revised the regulatory text in section 165.785(d) to provide for additional public outreach information not listed in the NPRM. The Coast Guard will notify the local community of the security zone in several ways consistent with our notification regulations contained in 33 CFR 165.7. Prior to activating the security zone, the Coast Guard will send a MSIB that contains a map of the security zone and description of the regulation to a local marine industry group who will circulate the MSIB among local marinas and local boating clubs. In addition, on-scene Coast Guard units will distribute MSIBs to approaching boaters. The Coast Guard will also issue a press release to local news outlets, and post the information on social media and on its news website at: www.news.uscg.mil. On-scene Coast

Guard patrol assets will display flashing energized blue lights when the center, west, or east security zones are in effect.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss the First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled “Guidance Implementing Executive Order 13771, ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

The economic impact of this rule is not significant for the following reasons: (1) The security zone will only be enforced when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service are present or expected to be present; (2) The center zone will only affect a relatively small area of the Intracoastal Waterway in Palm Beach, FL and vessels will be able to transit the zone if granted permission to do so by the COTP Miami or a designated representative; (3) The west zone is located in an area of the Intracoastal Waterway where vessel traffic is low, approximately 152 vessels per day, and vessels will be allowed to transit the zone when escorted by an on-scene designated representative; (4) Vessels may transit the east zone at a steady speed as long as they do not slow down or stop except in case of unforeseen mechanical failure or other emergency; and (5) The Coast Guard will notify the local community of the security zone in several ways consistent with our notification regulations contained in 33 CFR 165.7. Prior to activating the security zone, the Coast Guard will send a Maritime Safety Information Bulletin (MSIB) that contains a map of the security zone and description of the regulation to a local marine industry group who will circulate the MSIB among local marinas and local boating clubs. In addition, on-scene Coast Guard units will distribute MSIBs to approaching boaters. The Coast Guard will also issue a press release to local news outlets, and post the information on social media and on its news website at: www.news.uscg.mil. On-scene Coast Guard patrol assets will display flashing energized blue lights when the center, west, or east security zones are in effect. Larger vessels may need to wait to pass under the Southern Boulevard Bridge, which has set opening times pursuant to a separate existing regulation at 33 CFR 117.261(w). The bridge opens on the quarter-hour and three-quarter hour, or as directed by the on-scene designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule

elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting only a few days at a time that will restrict entry within certain waters of the Intracoastal Waterway and the Atlantic Ocean in Palm Beach, FL. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01, and under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.1D. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.785 before the undesignated center heading “Eighth Coast Guard District” to read as follows:

§165.785 Security Zone; Presidential Security Zone, Palm Beach, FL.

(a) Regulated areas. The following areas are security zones:

(1) Center zone. All waters of Lake Worth Lagoon from surface to bottom within the following points: Beginning at Point 1 in position 26°41’21”N, 80°02’39”W; thence east to Point 2 in position 26°41’21”N, 80°02’13”W; thence south following the shoreline to Point 3 in position 26°39’58”N, 80°02’20”W; thence west to Point 4 in position 26°39’58”N, 80°02’38”W, thence back to origin at Point 1.

(2) West zone. All waters of Lake Worth Lagoon from surface to bottom within the following points: Beginning at Point 1 in position 26°41’21”N, 80°02’39”W; thence west to Point 2 in position 26°41’21”N, 80°03’00”W; thence south following the shoreline to Point 3 in position 26°39’58”N, 80°02’55”W; thence east to Point 4 in position 26°39’58”N, 80°02’38”W, thence back to origin at Point 1.

(3) East zone. All waters of the Atlantic Ocean from surface to bottom within the following points: Beginning at Point 1 in position 26°41’21”N, 80°02’01”W; thence south following the shoreline to Point 2 in position 26°39’57”N, 80°2’09”W; thence east to Point 3 in position 26°39’57”N, 80°01’36”W; thence north to Point 4 in position 26°41’22”N, 80°01’29”W, thence back to origin at Point 1.

(b) Definition. The term “designated representative” means Coast Guard Patrol

Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, as well as Federal, state, and local officers designated by or assisting the COTP Miami with enforcing the security zone.

(c) Regulations—(1) Center zone. All persons and vessels are prohibited from entering, transiting, anchoring in, or remaining within the security zone unless authorized by the COTP Miami or a designated representative.

(2) West zone. All persons and vessels are required to transit the security zone escorted by an on-scene designated representative at a steady speed and may not slow down or stop except in the case of unforeseen mechanical failure or other emergency. Any persons or vessels forced to slow or stop in the zone shall immediately notify the COTP Miami via VHF channel 16.

(3) East zone. All persons and vessels are required to transit the security zone at a steady speed and may not slow down or stop except in the case of unforeseen mechanical failure or other emergency. Any persons or vessels forced to slow or stop in the zone shall immediately notify the COTP Miami via VHF channel 16.

(4) Contacting Captain of the Port. Persons who must notify or request authorization from the COTP Miami may do so by telephone at (305)535-4472 or may contact a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the security zone is granted by the COTP Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Miami or the designated representative.

(d) Enforcement period. This section will be enforced when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service are present or expected to be present at the Mar-a-Lago Club in Palm Beach, Florida. The Coast

Guard will rely on the methods described in §165.7 to notify the public prior to activation of any of the security zones described in paragraph (a) of this section. Coast Guard patrol assets will also be on-scene with flashing energized blue lights when the center, west, or east security zone is in effect.

Dated: April 7, 2018

M. M. Dean,
Captain, U.S. Coast Guard,
Captain of the Port Miami.

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